



TO THE HONORABLE JEFF BOHM, UNITED STATES BANKRUPTCY JUDGE:

The above-captioned Defendants<sup>1</sup> in Adversary Proceeding No. 10-03225 hereby object to the Motion for Expedited Consideration (“Motion for Expedited Consideration” Docket #45) of the Original Complaint and Application for Preliminary Injunction and Permanent Injunction (“Complaint”) filed by SkyPort Global Communications, Inc. (“SkyPort Global”), Balaton Group, Inc. (“Balaton”), and Robert Kubbernus (“Kubbernus”) (together “Consolidating Plaintiffs”). The grounds for this objection are as follows:

**OBJECTION TO MOTION FOR EXPEDITED CONSIDERATION**

1. The Motion for Expedited Consideration does not contain the language required by BLR 7007-1 and 9013. The Motion for Expedited Consideration does not set forth a *bona fide* basis that requires shortening the response and hearing dates on the Complaint.

2. The Motion for Expedited Consideration was filed on May 20, 2010, and the Complaint was filed on May 18, a week before the scheduled hearing.

3. Consolidating Plaintiffs fail to explain why these papers were filed last week, when this lawsuit was filed nearly four months ago and was removed the Bankruptcy Court nearly two months ago.<sup>2</sup> Consolidating Plaintiffs, two of which (Kubbernus and Balaton) were named in the original Petition and control the third Consolidating Plaintiff, have been represented by counsel in Adversary Proceeding No. 10-3150 since at least March 26, 2010.

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<sup>1</sup> Objecting Defendants are Joanne Schermerhorn, John K. Waymire, Chet Gutowsky, John Llewellyn, Joseph A. Lopez, Robert Foote, BLF Partners Ltd., ECAL Partners, Ltd., Whizkid Venture, LLC, Bella Krieger, Martin Pollack, George Metcalf, Gloster Holdings, LLC, Melvyn Reiser, Barry Klein, Cheskel Kahan, John A. Rees, Brian W. Harle, Michael Stein, Lawrence Solomon, Tracy Elstein & David Togut, Jason Charles Togut Trust, BMT Grantor Trust, Lynn Joyce Elstein Trust, Charles Stack, Joseph Baker, Movada, Ltd, Puddy, Ltd, Draco Capital, Inc., Edward Pascal, Robert Mendel, Stanley Beraznik, Don Bui, Ben Ariano, 3791068 Canada, Inc., Peter Taylor, John E. Panneton, Wayne C. Fox, David Currie, Byron Messier, Darshan Khurana, Mateo Novelli, Diya Al-Sarraj, Sequoia Aggressive Growth Fund, Ltd., Sequoia Diversified Growth Fund, Rig III Fund, Ltd., Aran Asset Management SA, Semper Gestion SA and Eosphoros Asset Management, Inc.

<sup>2</sup> The lawsuit was filed on February 12, 2010, and removed by Defendants to the Bankruptcy Court on March 29, 2010.

Kubbernus and Balaton have offered no rationale as to why they are now bringing an emergency request using a different law firm than the one already representing them, nor why Consolidating Plaintiffs did not move for the relief requested earlier in this case. Their failure promptly to bring their complaint and seek injunctive relief undermines their claim for expedited proceedings.

4. Beyond this, Consolidating Plaintiffs have offered no facts to this Court indicating that there is an emergency.

5. Nor do they provide any facts in support of their request for a preliminary injunction. They do not give any reason to think that Defendants have done anything that needs to be enjoined, and at this time, Defendants have no idea what facts they may allege to support their request, and accordingly have no idea what to prepare in response. At the very least, Defendants are entitled to discovery of the allegations supporting their request.

6. Defendants have already communicated to Consolidating Plaintiffs that they do not oppose consolidation. They have already communicated to Kubbernus and Balaton, as well as the Debtor, on several occasions and that they are willing to provide Consolidating Plaintiffs with complete assurances that they have no intent to obtain control over the Debtor and will not seek such control in the State Court action. Defendants have also assured Consolidating Plaintiffs that they have no intent of harming the Debtor or interfering with its business; that they have not done so and will not do so in the future; and they have assured Consolidating Plaintiffs that they have no intent to bring barred derivative claims, and that their concern is not being prevented from bringing direct claims only against third parties.

7. If Consolidating Plaintiffs had contacted Defendants before filing the Motion to

Consolidate, many of the issues raised could have been worked out.

8. A hearing on May 27 would not provide Defendants with sufficient time to prepare an evidentiary record and address the issues presented in Consolidating Plaintiffs' papers. The Complaint should be heard in due course.

WHEREFORE, Plaintiffs pray that the Court deny Plaintiffs' Motion for Expedited Consideration (docket #45) and grant such other and further relief as is just and proper.

Dated: May 25, 2010

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document is being served on the 25<sup>th</sup> day of May, 2010, on all of the following parties via regular first class mail, postage prepaid. Those ECF users registered in this case will receive electronic notice on May 25, 2010.

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